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SERVICE DATE – SEPTEMBER 8, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34992

ITASCA COUNTY REGIONAL RAIL AUTHORITY—PETITION FOR EXEMPTION— CONSTRUCTION OF A LINE OF RAILROAD IN ITASCA COUNTY, MN

Decided: September 5, 2008

By petition filed on March 9, 2007, the Itasca County Regional Rail Authority (ICRRA), a noncarrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct a 9-mile rail line from a connection with an existing rail line at Taconite, MN, to the site of a new steel mill to be built by Minnesota Steel Industries LLC (Minnesota Steel) at Nashwauk, MN, all located in Itasca County. Petitioner states that it intends to enter into a contract with an existing short line railroad to provide common carrier rail service over the line to the steel mill and any other future customers.

In a decision served on May 14, 2007, the Board instituted a proceeding under 49 U.S.C. 10502(b). The Board's Section of Environmental Analysis (SEA) conducted an environmental review of the proposed construction and alternatives to the proposal. An Environmental Assessment (EA), prepared by SEA, was issued for public review and comment on March 28, 2008. SEA then prepared a Post Environmental Assessment (Post EA) dated June 30, 2008. The Post EA considers all of the comments received on the EA, reflects SEA's further independent analysis, and sets forth SEA's final recommendations on alternatives and environmental mitigation.

After considering the entire record, including both the transportation aspects of the petition and the potential environmental issues, we will grant the requested exemption and authorize the construction of the route designated as Alternative 2, subject to the environmental mitigation measures recommended in the Post EA, which are set forth in the Appendix.

BACKGROUND

Petitioner is a regional rail authority and political subdivision established in Itasca County under Minnesota law for the purpose of owning, constructing, and operating railroads in Itasca County, which is located in the "Iron Range" area of northern Minnesota approximately 80 miles northwest of Duluth and approximately 205 miles northwest of Minneapolis. Minnesota Steel plans to locate a new steel mill along the proposed line at Nashwauk due to its proximity to taconite deposits. The proposed rail line would be used to transport small

shipments of construction materials and large shipments of steel slabs and taconite pellets associated with the steel mill operation in Nashwauk. Minnesota Steel expects to handle 30,000 carloads, approximately 3 million tons, of steel slabs and taconite pellets annually. This estimate is based on one train making single daily roundtrips, or two one-way trains per day. Each train would consist of approximately 70-90 cars. While Minnesota Steel would initially be the only customer using the line, ICRRA states that it hopes the construction of the proposed rail line would promote additional economic growth and attract new rail customers to locate along the proposed line.

The proposed 9-mile line would originate at Taconite, MN, where it would intersect with an existing rail line that extends between Grand Rapids and Forbes, MN. This existing line is owned in part by BNSF Railway Company (BNSF) and in part by the Canadian National Railway Company (CN), with both carriers operating over the line. The proposed ICRRA rail line would connect to the main line track near County Road 7 in Taconite, and this connection at Taconite would allow rail access to both Class I rail carriers. Construction of the proposed rail line would require approximately 111 acres for the right-of-way, which averages about 100 feet in width. Five alternative alignments were considered for the proposed rail line, all of which diverge from the BNSF/CN line near Taconite in a northwesterly direction and ultimately converge to form a single track line at the Minnesota Steel plant site in Nashwauk.

ICRRA states that it does not intend to operate the proposed line itself. Rather, ICRRA plans to enter into a contract with an existing, experienced short line railroad to provide common carrier rail service over the line to all present and future customers. Petitioner acknowledges that, as the owner of the proposed line, it would retain a residual common carrier obligation to provide rail service over the line.

ICRRA maintains that the proposed line would further the national rail transportation policy (RTP) at 49 U.S.C. 10101 by minimizing federal regulatory control over the rail transportation system, ensuring the development of a sound rail transportation system, ensuring effective competition, and reducing regulatory barriers to entry into the industry. Petitioner explains that this project would provide a shipper lacking direct rail access with that option, as well as promote the use of energy-efficient rail transportation. ICRRA states that this proposal is the kind of transaction that should qualify for an exemption from the prior approval requirements of 49 U.S.C. 10901.¹

No one filed comments opposing the petition.

¹ Under 49 U.S.C. 10901, we must authorize the construction and operation of a new line “unless the Board finds that such activities are inconsistent with the public convenience and necessity.”

DISCUSSION AND CONCLUSIONS

Rail Transportation Analysis.

The construction of railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901. Under section 10502, we must exempt a proposed rail line construction from the detailed application procedures of section 10901 when we find that: (1) those procedures are not necessary to carry out the RTP of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

Here, based on the information provided, we conclude that detailed scrutiny of the proposed construction under 49 U.S.C. 10901 is not necessary to carry out the RTP, and that the proposed construction project is therefore appropriate for handling under the exemption process. The proposed rail line will increase the rail transportation options available to Minnesota Steel, as well as to any other shippers that may locate on the line, and thus will enable shippers to realize the benefits of increased railroad competition [49 U.S.C. 10101(1) and (4)]. Moreover, exempting the proposed construction from 49 U.S.C. 10901 will reduce the need for Federal regulation, ensure the development of a sound transportation system with effective competition among rail carriers, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Nothing in the record indicates that the proposal would adversely affect other aspects of the RTP.

Use of the formal application procedures here is not necessary to protect shippers from an abuse of market power. Rather, the proposed rail line will provide the area with additional transportation options and enhanced competition. Given our finding regarding the lack of need for shipper protection, we need not determine whether the transaction is limited in scope.

Environmental Analysis.

In reaching our decision, we have also taken into account the environmental impacts associated with this construction proposal by fully considering the EA, Post EA, and the entire environmental record. Based on the environmental record, we have also reviewed the various alternative routes that were considered and what conditions should be imposed to mitigate the environmental impacts of the proposed construction.

The Requirements of NEPA. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321-43, requires Federal agencies to examine the environmental effects of proposed Federal actions and to inform the public concerning those effects. Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, we must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize a railroad construction as proposed, deny the proposal, or grant it

with conditions (including environmental mitigation conditions). The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed action before it is implemented, in order to minimize or avoid potential adverse environmental impacts. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989). While NEPA prescribes the process that must be followed, it does not mandate a particular result. Mid States Coalition for Progress v. STB, 345 F.3d 520, 533-34 (8th Cir. 2003). Thus, once the adverse environmental effects have been adequately identified and evaluated, we may conclude that other values outweigh the environmental costs. Robertson v. Methow, 490 U.S. 332, 350-51 (1989).

The Environmental Review Process. As noted above, in this case an EA was issued for public review and comment on March 28, 2008. In the EA, SEA considered a number of alternatives, including the “no-build” alternative. SEA determined that all of the “build” alternatives considered would have comparable environmental impacts. However, SEA designated Alternative 2 as environmentally preferable, because it would be the shortest route (at 9.2 miles), would avoid all residential and commercial areas, would involve minimal rail line grade and alignment issues, and would require the least amount of land for the right-of-way. SEA also preliminarily concluded, based on the information provided from all sources as of the date of the EA, and based on SEA’s independent analysis, that the construction and operation of Alternative 2 would not have significant environmental impacts if the Board imposes and ICRRA implements the recommended mitigation measures set forth in the EA. SEA preliminarily recommended that we impose these environmental mitigation measures on any decision granting the petition for exemption.

Comments on the EA were filed by: the United States Department of the Interior National Park Service, ICRRA, Minnesota Historical Society’s State Historic Preservation Office (SHPO), Minnesota Department of Natural Resources (MNDNR), and the Leech Lake Band of Ojibwe. After considering the comments on the EA, SEA prepared a Post EA, dated June 30, 2008, in which it continued to recommend Alternative 2 as environmentally preferable and revised some of the mitigation recommended in the EA. Specifically, in response to ICRRA’s comment, SEA recommends modifying the alignment of the proposed line so that the westerly terminus is located 0.5 mile east of County Road 7, which would reduce the length of the alignment by 0.5 miles, reduce wetland impacts, avoid an abandoned iron-ore mine, and eliminate the need to cross a tributary of Holman Lake and to modify the existing CN bridge over County Road 7. Additionally, SEA recommends modifying its previously recommended mitigation measure #12 to include the requirement of a Public Waters Work Permit in affected areas near the ordinary high water level of three protected waters. Finally, SEA recommends modifying its previously recommended mitigation measure #10 to require that a copy of the botanical survey report be sent to MNDNR upon completion.

Our Conclusions on the Environmental Issues. After reviewing the entire environmental record, we adopt all of SEA’s analysis, recommendations, and conclusions, including those not specifically discussed here. We are satisfied that SEA took the requisite “hard look” at potential

environmental impacts and accurately identified and independently evaluated the potential environmental effects associated with the project.

With respect to the alternatives, we agree with SEA that Alternative 2 is the environmentally preferred alternative, for the reasons stated above and in the EA and Post EA. A list of all of the environmental mitigation measures we are imposing is set forth in the Appendix to this decision.

CONCLUSION

We find, after weighing the various transportation and environmental concerns and considering the entire record, that the petition for exemption should be granted and that petitioner may build Alternative 2, subject to compliance with the environmental mitigation listed in the Appendix to this decision.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts the construction of the above-described line from the prior approval requirements of 49 U.S.C. 10901.
2. The Board authorizes the construction of Alternative 2 and imposes the environmental mitigation measures set forth in the Appendix to this decision as conditions to the exemption granted in this proceeding.
3. Notice will be published in the Federal Register on September 11, 2008.
4. Petitions to reopen must be filed by September 29, 2008.

5. The decision is effective 30 days from its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

APPENDIX

Physical Resources – Geology and Soils, Surface and Ground Water, and Air Quality

1. ICRRA shall limit construction activities and vegetation clearing to the railroad right-of-way in order to minimize fugitive dust generation, and employ best management practices in the control and suppression of fugitive dust emissions.
2. ICRRA shall comply with all applicable Federal, state, and local regulations regarding open burning and the control of fugitive dust related to rail line construction activities. ICRRA shall take reasonable measures to maximize combustion and minimize smoke during any open burning activities.
3. To address the concerns of the Minnesota Department of Health (MDH), ICRRA will employ best management practices to prevent surface and groundwater contamination during construction and operation of the rail line.
4. To address the concerns of the U.S. Department of Agriculture, Natural Resources Conservation Service, should Federal funds be used by ICRRA during construction of the rail line, ICRRA shall identify farmland soils as determined by the Itasca County Soil Survey, obtain all evaluations, and comply with reasonable requirements of the Farmland Protection Policy Act.

Biological Resources – Vegetation, Wetlands, and Wildlife

5. ICRRA shall re-seed the railroad right-of-way outside the subgrade slope with native grass species and other appropriate native vegetation to minimize impacts on wildlife and wetland areas after construction is completed.
6. ICRRA shall minimize sedimentation and erosion in the project area by employing best management practices to reduce soil erosion during construction. In addition, ICRRA shall re-seed disturbed areas with appropriate native species immediately following construction to establish ground cover and minimize soil exposure.
7. ICRRA shall avoid or minimize disturbance to wetland areas whenever possible during construction.
8. ICRRA shall adhere to the reasonable mitigation measures as imposed by the United States Army Corps of Engineers (USACE) in any section 404 permit(s) issued by USACE for construction of the line.
9. ICRRA shall minimize disturbance to wildlife by restricting construction activities to the proposed rail line right-of-way and immediate surrounding area.
10. ICRRA shall conduct a botanical survey of the proposed rail line right-of-way prior to construction to determine the presence or absence of any threatened or endangered plant species. Upon completion of the botanical survey and report, ICRRA will provide a copy to Lisa Joyal, Endangered Species Environmental Review Coordinator for MNDNR. If threatened or endangered species are found, ICRRA shall coordinate with the Minnesota Department of Natural Resources (MNDNR) to develop appropriate mitigation.
11. ICRRA shall apply for and obtain from the Minnesota Board of Water and Soil Resources or Itasca County, as appropriate, a permit under the Wetland Conservation

Act. ICRRA shall adhere to the reasonable compensatory wetland mitigation measures as imposed in any Wetland Conservation Act permits issued.

12. ICRRA shall apply for and obtain a Public Waters Work Permit from Minnesota Department of Natural Resources (MNDNR), as appropriate, for any work below the ordinary high water level (OHWL) areas for three protected waters: the unnamed stream connected to Holman Lake, located in Section 22, Township 56 North, Range 24 West; Big Diamond Lake, located in Section 23, Township 56 North, Range 24 West; and the unnamed lake/tailing basin located in Section 9, Township 56 North, Range 23 West.

Noise

13. ICRRA shall maintain construction and maintenance vehicles in good working order to minimize air emissions, noise, and fluid leaks.
14. ICRRA shall conduct construction activities in accordance with all Federal, state, and local ordinances pertaining to noise and air emissions.

Cultural Resources

15. To protect cultural and historic resources, ICRRA shall comply with the provisions of the Programmatic Agreement as incorporated by addendum and executed between USACE, Minnesota SHPO, and SEA with ICRRA's concurrence.
16. ICRRA shall cease construction activities and notify the Minnesota SHPO immediately if any cultural or archaeological resources are inadvertently discovered during construction of the rail line.

Hazardous Materials/Waste Sites

17. ICRRA shall observe all applicable Federal, state, and local regulations regarding the handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the rail line. Should a spill occur during construction or operation of the rail line, ICRRA shall follow the appropriate emergency response procedures outlined in its Emergency Response Plan, and ensure that any spills are cleaned up in accordance with all applicable Federal, state, and local regulations.